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NO. 02-94

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM OVERTON, Director of Michigan Department of Corrections: MICHIGAN DEPARTMENT OF CORRECTIONS,

Petitioners,

vs.

MICHELLE BAZZETTA, et al.,

Respondents.

On Petition for Writ of Certiorari to
The United States Court of Appeals for the Sixth Circuit

AMICUS CURIAE BRIEF OF THE STATES OF COLORADO, ALABAMA, IDAHO, INDIANA, MISSISSIPPI, NEBRASKA, NEVADA, NEW HAMSPHIRE, OKLAHOMA, SOUTH DAKOTA, AND TEXAS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Ken Salazar
Attorney General
Alan J. Gilbert*
Solicitor General
Juliana M. Zolynas
Assistant Attorney General
1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone: (303) 866-3052
**Counsel of Record*

(Names and addresses of attorneys continued on inside cover)

60pp

STATE OF ALABAMA
WILLIAM H. PRYOR JR.
Attorney General

STATE OF IDAHO
ALAN G. LANCE
Attorney General

STATE OF INDIANA
STEVE CARTER
Attorney General

STATE OF MISSISSIPPI
MIKE MOORE
Attorney General

STATE OF NEBRASKA
DON STENBERG
Attorney General

STATE OF NEW HAMPSHIRE
PHILIP T. MCLAUGHLIN
Attorney General

STATE OF NEVADA
FRANKIE SUE DEL PAPA
Attorney General

STATE OF OKLAHOMA
W.A. DREW EDMONDSON
Attorney General

STATE OF SOUTH DAKOTA
MARK BARNETT
Attorney General

STATE OF TEXAS
JOHN CORNYN
Attorney General

QUESTION PRESENTED

Whether a prison visitation policy that terminates all visitation privileges for inmates who have been convicted of drug offenses while incarcerated (a) violates a right of intimate association under the First and Fourteenth Amendments, or (b) constitutes cruel and unusual punishment in violation of the Eighth Amendment.

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INTEREST OF *AMICUS CURIAE*

In *Bazzetta v. McGinnis*, 286 F.3d 311 (6th Cir. 2002), the Sixth Circuit held that a regulation promulgated by the Michigan Department of Corrections ("MDOC"), which terminates all visitation privileges for inmates who have been convicted of at least two drug offenses while incarcerated, violates the First, Eighth, and Fourteenth Amendments to the United States Constitution. Several states have adopted similar restrictions on prison visitation.[1] Although the Sixth Circuit's

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[1] *See, e.g.* California Admin. Code title 15, § 3315(f)(5)(I) (7/12/02) (visitation may be lost up to six months for drug possession) (*Amicus Curiae* Appendix ("App.") p. a1); Colorado Dept. of Corrections Administrative Regulation 300-01.IV.L.10.c (7/1/02) (three-year suspension of all visitation after three drug-related disciplinary convictions) (App. p. b1); Florida Admin. Code §§ 33-601.731(2) and 33-601.731(3) (indefinite suspension of visiting privileges for weapons possession and two-year suspension of privileges for drug possession) (App. p. c1); Georgia Admin. Code 125-3-4-.01 (3/31/01) (all visiting privileges may be suspended or revoked) (App. p. d1); Idaho Admin. Code 06.01.01.604.01 (4/3/02) (visitation a matter of discretion) (App. p. e1); Indiana Code § 11-11-3-9 (2002) (prohibition of visitation between inmate and specific visitors) (App. p. f1); Iowa Dept. of Corrections Policy Nos. IN-V-122(VI) (10/00) (termination of visiting privileges) and IN-V-36 (12/00) (disciplinary sanctions can include one year loss of visitation privileges) (App. pp. g1-g2); Kansas Admin. Reg. 44-7-104(a)(7) (1/1/01) (suspension of visiting privileges for violation of visiting rules) (App. p. h1); Maryland Div. of Correction DCD 105-4 Appendix 3 (up to six month suspension of visitation) (App. pp. i1-i2); Minnesota Dept. of Corrections Directive 302.100 (5/13/02) (visiting privileges may be lost for drug-related offenses) (App. pp. j1-j3);

decision is not binding in other circuits, it may be considered persuasive authority to invalidate the visitation policies of several other states. In fact, the Sixth Circuit's ruling may have an adverse effect upon a federal regulation allowing for the suspension of visitation for federal prisoners. *See* 28 C.F.R. § 540.52 (App. p. s1).

The Sixth Circuit's decision is potentially disruptive to prison management across the country. In Colorado alone there are more than 17,000 inmates housed in 23 correctional facilities. When managing sizeable inmate populations, corrections officials need to make decisions which further the goals of prison security and inmate rehabilitation without violating the Constitution. These goals are most pronounced in

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Mississippi Dept. of Corrections S.O.P. 18-02-01 (6/1/02) (loss of visiting privileges for disciplinary rule violations) (App. pp. k1-k2); New Hampshire Dept. of Corrections PPD 7.9(IV)(M)(1) & 7.9(IV)(P) (7/1/02) (visiting privileges may be lost for rule violations and drug violations) (App. pp. l1-l2); New York Comp. Codes R. & Regs. tit. 7, § 200.5(a) (4/1/02) (visiting privileges may be suspended or revoked to maintain "safety, security, and good order") (App. p. m1); North Carolina Inmate Disciplinary Procedures Ch. B, § .0204 (up to six months loss of visitation for Class A disciplinary offense) (App. pp. n1-n2); Ohio Dept. of Rehabilitation and Correction § 312, No. 2, Pts. VI(K) and VI(L) (2/2/01) (all visitation may be suspended for misconduct) (App. pp. o1-o2); Rhode Island Admin. Code 06.070.004 Pt. III(E)(13) (6/02) (up to one year suspension of visitation for drug-related offenses) (App. p. p1); South Carolina Dept. of Corrections OP-22.09 (10/30/98) (visiting privileges suspended for two years for inmates who possess drugs while entering, exiting, or in the visiting room) (App. pp. q1-q3); Tennessee Dept. of Correction Reg. 507.01(VI)(F)(4) (10/1/01) (warden may suspend visiting privileges up to six months for any reason) (App. pp. r1-r2).

the context of inmate visitation, which often can serve as a means for importing contraband into prisons. A clear rule of law is necessary to guide states concerning when or whether visitation privileges may be suspended or permanently revoked.

SUMMARY OF REASONS FOR GRANTING THE WRIT

The writ of certiorari should be granted for several compelling reasons. First, the Sixth Circuit's decision conflicts with other circuit court decisions addressing whether there is a constitutional right to visitation. It is important to resolve this conflict between the circuits because it creates uncertainty for state prison systems in promulgating regulations and policies pertaining to inmate management.

Second, whether an inmate possesses a constitutional right to non-contact visitation is an important federal question with national implications for inmate management, particularly in light of the fact that several states allow for the suspension or termination of visitation when inmates have been found guilty of possessing illegal substances or have engaged in other misconduct. States need guidance concerning the constitutional boundaries for restrictions on inmate visitation.

Finally, the Sixth Circuit's ruling is inconsistent with Supreme Court decisions addressing the extent of associational and other constitutional rights retained by inmates during incarceration. Although the scope of an inmate's right, if any, to non-contact visitation has not been settled by this Court, *see Kentucky Dept. of Corrections v. Thompson*, 490 U.S. 454, 465 (1989) (Kennedy, J., concurring) (unsettled whether a complete ban on visitation would be constitutional), the Court has issued several rulings explicating that inmates retain limited rights during incarceration. The Sixth Circuit's decision is incompatible with those existing Supreme Court

cases, because the decision confers upon inmates a right to intimate human relationships which is inconsistent with incarceration, finds that non-contact visitation cannot be suspended without due process, and finds that the Eighth Amendment is violated when visitation is permanently suspended. As a result, there is now a lack of clarity concerning when or whether it is constitutional to suspend or terminate visitation.

REASONS FOR GRANTING THE WRIT

I. The Sixth Circuit's decision conflicts with decisions from other circuits.

The Sixth Circuit held that inmates have a constitutional right to non-contact visitation under the First, Eighth, and Fourteenth Amendments. *Bazzetta*, 286 F.3d at 323. The court determined that inmates "retain a limited right to freedom of association -- specifically non-contact visits with intimate associates[.]" *Id.* at 316. With respect to MDOC's permanent ban on visitation for inmates with two or more substance abuse convictions, it determined that the regulation failed to provide adequate process because no hearing is held before the ban is imposed. *Id.* at 323. It also found that a permanent ban on visitation constitutes cruel and unusual punishment. *Id.* at 322-23.

The *Bazzetta* court's ruling conflicts with the majority of circuit courts which have held that inmates do not possess a constitutional right to visitation. *See Berry v. Brady*, 192 F.3d 504, 508 (5th Cir. 1999) ("no constitutional right to visitation privileges"); *Peterson v. Shanks*, 149 F.3d 1140, 1145 (10th Cir. 1998) ("prison officials necessarily enjoy broad discretion in controlling visitor access to a prisoner"); *Mayo v. Lane*, 867 F.2d 374, 375 (7th Cir. 1989) ("Prison necessarily disrupts the normal pattern of familial association, so lawful imprisonment can hardly be thought a

deprivation of the right of relatives to associate with the imprisoned criminal."); *Evans v. Johnson*, 808 F.2d 1427, 1428 (11th Cir. 1987) ("no absolute constitutional right to visitation, such privilege being subject to the discretion of prison authorities"); *Thorne v. Jones*, 765 F.2d 1270, 1273 (5th Cir. 1985) (no "absolute rights of physical association"); *McCray v. Sullivan*, 509 F.2d 1332, 1334 (5th Cir. 1975) ("Visitation privileges are a matter subject to the discretion of prison officials.").[2]

A minority of courts, mainly district courts, has reached the opposite conclusion. *See Valentine v. Englehardt*, 474 F. Supp. 294, 295, 301 (D.N.J. 1979) (a total ban on all visitation with children is unconstitutional); *Laaman v. Helgemoe*, 437 F. Supp. 269, 320-22 (D.N.H. 1977) (inmates have a right to familial association under the First Amendment, and a total ban on visitation violates the First, Eighth, and Fourteenth Amendments). The Sixth

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[2] In addition, many district courts have come to the same conclusion. *N.E.W. v. Kennard*, 952 F. Supp. 714, 718-19 (D. Utah 1997) (the right to familial association can be lost upon incarceration); *Smith v. Matthews*, 793 F. Supp. 998, 1001 (D. Kan. 1992) ("no general right to prison visitation for either prisoners or the public") (citing 28 C.F.R. § 511.13(a) & (b)); *Flanagan v. Shively*, 783 F. Supp. 922, 934 (M.D. Pa.) ("no constitutional right to visitation"), *aff'd*, 980 F.2d 722 (3d Cir. 1992) (Table); *Massey v. Wilson*, 484 F. Supp. 1332, 1333 (D. Colo. 1980) (visitation within the discretion of prison officials); *White v. Keller*, 438 F. Supp. 110, 115 (D. Md. 1977) ("no constitutional right to prison visitation, either for prisoners or visitors"), *aff'd*, 588 F.2d 913 (4th Cir. 1978); *Adams v. Aaron*, 421 F. Supp. 430, 431 (E.D. Ill. 1976) (visitation a matter of discretion); *Feazell v. Augusta County Jail*, 401 F. Supp. 405, 407 (W.D. Va. 1975) (visitation an internal prison matter).

Circuit's decision recognizing associational, due process, and Eighth Amendment rights to visitation falls within this minority and creates a split between the circuits.

This conflict between the circuits is potentially detrimental to the management of state and federal prisons. Many states have adopted regulations or policies allowing for the suspension or termination of visitation, and the constitutionality of those regulations and policies could be called into question as a result of the *Bazzetta* decision. Likewise, federal prisons authorize the suspension of visitation in certain instances. *See* 28 C.F.R. § 540.52 (App. p. s1). Because corrections officials have a strong interest in managing inmates within the metes and bounds of the Constitution, review by this Court can stave off further uncertainty and confusion caused by the Sixth Circuit's ruling.

II. Whether inmates possess a constitutional right to non-contact visitation presents a question of national importance, because the suspension of visitation is a nationally recognized means of managing inmates and furthering the goals of prison security and inmate rehabilitation.

Several state corrections departments have promulgated regulations which allow for the suspension or termination of all visitation where inmates have been convicted of drug-related prison disciplinary offenses or have engaged in other misconduct during their incarceration. *See supra* at n.1. Likewise, federal inmates may lose their visitation privileges if they violate visitation rules. *See* 28 C.F.R. § 540.52 (App. p. s1). Accordingly, the Sixth Circuit's decision, if followed by other jurisdictions, would be detrimental to prison management by state correctional institutions nationwide.

The decision also creates uncertainty regarding the application of the federal regulation allowing for the suspension of visitation privileges.

The termination of non-contact visitation is a useful prison management tool which furthers the goals of prison security and inmate rehabilitation. *See Bazzetta v. McGinnis*, 148 F. Supp. 2d 813, 852 (E.D. Mich. 2001). It is important to remember that the loss of visitation privileges is brought about by the inmate's own voluntary conduct. It is the inmate who has the opportunity to prevent the loss of the privilege by refraining from drug-related and other misconduct in prison. In Michigan, the inmate is given this opportunity twice before privileges are lost with respect to the drug-related disciplinary offenses.

Prison officials must be given discretion to manage the "complex and intractable" problems facing prison institutions. *See Procunier v. Martinez*, 416 U.S. 396, 405 (1974), *overruled on other grounds*, *Thornburgh v. Abbott*, 490 U.S. 401, 404-05 (1989). The introduction of illegal drugs into the prison setting "is one of the most perplexing problems of prisons today[.]" *Hudson v. Palmer*, 468 U.S. 517, 526-27 (1984); *see also Block v. Rutherford*, 468 U.S. 576, 586, 589 (1984) (contact visits); *cf. Shaw v. Murphy*, 532 U.S. 223, 231 (2001) (relying upon common knowledge that inmates have used correspondence for passing contraband). Corrections officials need to be allowed to terminate visitation for inmates with multiple drug-related disciplinary convictions in order to combat this intractable and perplexing problem. The Sixth Circuit's decision removes discretion from corrections officials concerning these internal matters and imposes a solution which is burdensome, is not constitutionally required, and has potentially negative implications for prison management throughout the country.

III. The Sixth Circuit's decision is incompatible with decisions from the Supreme Court.

This Court has recognized on numerous occasions that although inmates do not completely shed all constitutional rights at the jailhouse door, they only retain those rights that are consistent with incarceration. *See Pell v. Procunier*, 417 U.S. 817, 822 (1974) ("a prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner"); *Shaw*, 532 U.S. at 229 (prisoners possess fewer rights than "individuals in society at large."); *Washington v. Harper*, 494 U.S. 210, 223-24 (1990); *Hudson*, 468 U.S. at 523-24 ("[I]mprisonment carries with it the circumscription or loss of many significant rights."); *Hewitt v. Helms*, 459 U.S. 460, 467 (1983). The Court has held that the right to freedom of association is "necessarily curtailed by" incarceration. *Jones v. North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119, 125-26 (1977). The Sixth Circuit's decision conflicts with these Supreme Court decisions, because it recognizes an associational right which is inconsistent with incarceration.

The Sixth Circuit further ruled that inmates possess a fundamental right to maintain intimate relationships with family protected by the Fourteenth Amendment. *Bazzetta*, 286 F.3d at 317. Although some fundamental rights do survive incarceration, *see Turner v. Safley*, 482 U.S. 78, 96 (1987) (the right to marry), this Court has acknowledged that severe restrictions can be placed upon an inmate's ability to visit with family, which suggests that the fundamental right to maintain intimate family relationships *in person* does not survive incarceration. *Olim v. Wakinekona*, 461 U.S. 238, 248 n.9 (1983) (separation from family by interstate prison transfer was constitutional and within the normal limits of custody). In addition, "[t]he denial of prison access to a particular visitor 'is well within the terms of confinement

ordinarily contemplated by a prison sentence, and therefore is not independently protected by the Due Process Clause.'" *Thompson*, 490 U.S. at 461 (cite omitted). The Sixth Circuit's ruling that the Due Process Clause is implicated thus also conflicts with decisions from the Supreme Court.

It is important to resolve the apparent conflict between the *Bazzetta* decision and existing Supreme Court precedent. Corrections institutions around the country have promulgated policies allowing for the suspension or termination of inmate visitation with the understanding that visitation is a privilege and it is within their discretion to terminate visitation. If the Constitution forbids the outright termination of visitation even where inmates have engaged in misconduct, or if some minimal process is due prior to the termination of visitation, then a clear rule of law is needed so that States may ensure that inmates' constitutional rights are not violated.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted.

Ken Salazar
Colorado Attorney General
Alan Gilbert*
Solicitor General
Juliana M. Zolynas
Assistant Attorney General
1525 Sherman Street, 5th Floor
Denver, Colorado 80203
(303) 866-3052
**Counsel of Record*

Dated: August, 2002

APPENDIX A

California Administrative Code
Title 15
Section 3315(f)(5)(I)

§ 3315(f)(5)(I):

Loss of visits to be followed by non-contact visits for violations of subsection 3323(d)(6) shall be as follows:

1. Loss of visits for 90 days, to be followed by non-contact visits for 90 days for the first offense.

2. Loss of visits for 90 days, to be followed by non-contact visits for 180 days for the second offense.

3. Loss of visits for 180 days, to be followed by non-contact visits for 180 days for the third offense.

APPENDIX B

Colorado Department of Corrections
Administrative Regulation 300-01.IV.L.10

10. Possession and/or use of illegal drugs constitutes a serious threat to the security of all correctional facilities or offices, requiring that all efforts be employed to preclude entry and/or use of illegal drugs within a correctional facility or DOC office. Accordingly, upon verified possession or use of illegal drugs or participation in drug-related activities, to include refusals of drug screening procedures, forfeiture of the offender's social visiting privileges shall, at a minimum, be imposed as follows:

a. First conviction: Six (6) months suspension followed by three (3) months non-contact visiting, if available.

b. Second conviction: Twelve (12) months suspension followed by six (6) months of non-contact visiting.

c. Third conviction: Three (3) year suspension, after which an offender can reapply for visiting privileges.

d. Forfeiture of social visiting privileges under these conditions will be ordered by the Administrative Head.

e. Verified possession will be by accepted testing procedures such as Narkit field testing and/or urinalysis screening.

APPENDIX C

Florida Administrative Code
Sections 33-601.731(2) and 33-601.731(3)

(2) Indefinite suspension of an inmate's visiting privileges as a management tool by the ICT is available as a management tool by the ICT when an inmate is found guilty of the following offenses:

(a) Possessing any firearms, dangerous weapons, explosives or explosive devices;

(b) Criminal activity, serious rule violations, repeated visiting rule or procedure infractions or security [breach]. A serious rule violation is a violation that subjects the violator to suspension of privileges for a minimum of two years or to revocation of visiting privileges.

(3) Suspension of an inmate's visiting privileges as a management tool by the ICT for the following disciplinary offenses are authorized up to two-years when inmate is found guilty of:

(a) Committing or engaging in sexual misconduct (i.e. nudity, sexual acts with or without others, willful exposure of private body parts, or soliciting sexual acts from others).

(b) Possessing drugs or money.

(c) Possession of any article or instrument that aids in escape or attempted escape.

APPENDIX D

Georgia Administrative Code
Title 125
Subtitle 125-3
Chapter 125-3-4
Section 125-3-4-.01

Visiting is an inmate privilege not a right. As such, some or all of an inmate's visiting privileges may be suspended or revoked as a disciplinary measure; because the rules governing visiting are violated; or when the security of the institution so requires. The Warden may modify or limit the visiting privileges if it appears that the institution cannot accommodate the quantity of visitors entering the institution.

APPENDIX E

Idaho Administrative Code
Agency 06
Title 01
Chapter 01
Section 604.01

604. Visiting Inmates.

01. Visitation at the Discretion of the Facility Head. Inmate visitation is allowed at the discretion of the facility head, or designee. Each division and each facility may promulgate directives or field memoranda to govern inmate visiting. Whether a visit is contact or non-contact shall be in the sole discretion of the facility head, subject to Subsection 405.03.

APPENDIX F

Indiana Code
Section 11-11-3-9 Visitors; prohibition; notice to confined person

Sec. 9. A person may be prohibited from visiting a confined person, or the visit may be restricted to an extent greater than allowed under section 8 of this chapter, if the department has reasonable grounds to believe that the visit would threaten the security of the facility or program or the safety of the individuals. If the department prohibits or restricts visitation between a confined person and another person under this section, it shall notify the confined person of that prohibition or restriction. The notice must be in writing and include the reason for the action, the name of the person who made the decision, and the fact that the action may be challenged through the grievance procedure.

APPENDIX G

Iowa Department of Corrections
Division of Institutions
Policy and Standards
Policy Numbers IN-V-122(VI) and IN-V-36

IN-V-122(VI) Termination of Visits

Visiting privileges may be denied, modified, or terminated due to:

A. Personal behavior of the offender or visitor that is presenting a threat to security and order.

B. The visitor and offender directly exchange any unauthorized object or article. Purchases from the visiting room vending machines/canteen during the visit are authorized.

C. An authorized electronic detection device indicating the presence of drugs or other contraband or when before, during, or after the visit the apparent odor or effect of alcohol or narcotic drugs is detected.

D. Visits may be denied or terminated when the visit or future visiting is detrimental to the health and welfare of the offender or visitor.

E. Any behavior on the part of an offender or a visitor which is or may be disruptive to order and control or which violates institutional rules.

F. Visitors who fail to supervise their children when

they interfere or disrupt other visits.

G. Offenders may request reconsideration of denied visitors following demonstrated resolution of the reasons for denial or when approved by the Warden/Superintendent or Regional Deputy Director.

IN-V-36

E. Authorized Sanctions:

Upon a finding of guilty by the Administrative Law Judge, the Administrative Law Judge shall specify the class of the violation taking into consideration any aggravating or mitigating circumstances. Any or all of the following sanctions listed for a given class may be imposed at the direction of the Administrative Law Judge:

1. Class A

a) Loss of good/earned time not to exceed three hundred sixty-five (365) days.

b) Disciplinary detention up to three hundred sixty-five (365) days for serious or dangerous violence or one hundred eighty (180) days for all other offenses.

c) Loss or modification of any or all privileges including but not limited to, canteen privileges (not including personal hygiene items), visiting privileges, allowance for work performed, access to jobs and programs, not to exceed one year. . . .

APPENDIX H

Kansas Administrative Regulation
Agency 44
Article 7
Section 44-7-104

§ 44-7-104(a)(7)

An individual's visiting privileges may be suspended if the individual violates any visitation rules while in the institution.

(A) The principal administrator shall determine the length of any suspension.

(B) The initial length of a suspension imposed for violation of an institutional rule shall not exceed one year and shall be reviewable on an annual basis thereafter at the request of the inmate. . . .

APPENDIX I

Maryland Division of Corrections
Alternative Disciplinary and Informal Sanctions

The following sanctions may be imposed as sanctions for informal dispositions or after a formal disciplinary hearing independently, in conjunction with other alternative sanctions, or in addition to the revocation of good conduct and/or special program credits and/or segregation time determined by the sentencing matrix.

1. Reprimand

2. Sanitation Assignment for a specific period not to exceed 15 days as an informal sanction or 30 days as an alternative sanction.

3. Restitution

4. Suspension of any of the following privileges:

a. Radio, CD/tape player, television, telephone, and/or commissary (excluding personal hygiene and legal correspondence items) privileges for a specific period not to exceed 15 days as an informal sanction or 90 days as an alternative sanction.

b. Package - catalog privilege for a specified period not to exceed six months as an informal sanction or one year as an alternative sanction.

c. Visiting privileges, except legal and clergy, for a specific period not less than 15 days nor more than 60 days as an informal sanction or not less than 60 days but not more than 180 days as an alternative sanction.

d. Any other specified institutional privilege for a specific period not to exceed 45 days as an informal sanction or 90 days as an alternative sanction.

5. Cell Restriction for a specific period not to exceed 30 days as an informal sanction or 60 days as an alternative sanction.

APPENDIX J

Minnesota Department of Corrections
Visiting Restrictions for Offenders
Directive 302.100B

Rule Violation	1st Offense	2nd Offense	3rd Offense
1. Physical assault or attempted assault of staff, offenders, or visitors in the visiting area.		Indefinite non-contact to loss of visiting privileges	
2. Smuggling, or attempting to smuggle (drugs -- including tobacco -- weapons, escape materials, or other threatening items in or out of the facility). Conviction in discipline for a smuggling offense required.	5 years non-contact**	Indefinite non-contact to loss of visiting privileges **	Indefinite non-contact to loss of visiting privileges **
3. Smuggling or attempting to smuggle contraband other than the above in or out of the facility.	6 months non-contact	3 years non-contact**	Loss of visiting privileges**
4. Verbal abuse or threats to staff and others in the visiting area.	6 months non-contact	1 year non-contact**	Indefinite non-contact or loss of visiting privileges**
5. Positive UA, refusing a UA, or altering or attempting to alter a UA.	9 months non-contact	18 months non-contact**	Indefinite non-contact or loss of visiting privileges**

6. Possession of mood altering chemicals or paraphernalia (including tobacco, drugs, etc.) anywhere in the facility.	9 months non-contact	18 months non-contact**	Indefinite non-contact or loss of visiting privileges**
7. Inappropriate sexual behavior and/or physical contact in the visiting area.	Termination of visit and 3 months non-contact	6 months non-contact	Indefinite non-contact or loss of visiting privileges**
8. Masturbation, mutual masturbation, oral sex or sexual intercourse in the visiting area.	1 year non-contact	Permanent non-contact or loss of visiting privileges	Permanent non-contact or loss of visiting privileges
9. Interfering with searches (unclothed body search or pat search) in the visiting area.	6 months non-contact	1 year non-contact**	Indefinite non-contact or loss of visiting privileges**
10. Visiting room rule violations involving offenders, visitors and/or children.	Termination of visit.	3 months non-contact	6 months non-contact
11. Disobeying a direct order in the visiting area.	6 months non-contact	1 year non-contact**	Indefinite non-contact or loss of visiting privileges**
12. Unauthorized verbal or nonverbal communication through the perimeter or other barriers.	6 months non-contact	1 year non-contact**	1 year to indefinite non-contact**

** All sanctions 1 year in duration and longer will be annually reviewed by the facility Visiting Committee at the request of the offender.

APPENDIX K

Mississippi Department of Corrections
Disciplinary Procedures
S.O.P. 18-02-01

Disposition and Penalties

The Disciplinary Hearing Officer will consider the seriousness of each incident/violation to include those incidents/violations listed on the Intensive Supervision Program and Earned Release Certificate and the mental status of each offender when assessing punishment.

Time frame for 1st, 2nd, and 3rd RVR's for the same violation is three (3) months. Custody levels should be considered as D, C, MORB, MOB, MORA and MOA.

Disposition/Penalties, which may be imposed by a Hearing Officer for a rule violation, are as follows:

Rule #1 Assaulting any person

1st RVR:

- Reclassification
- Reassignment
- Loss of Earned Time (all-maximum)
- Isolation - 20 days (max.)
- Referral to DA
- Loss of visiting privileges - 30 days (max.)
- Loss of canteen privileges - 30 days (max.)
- Loss of telephone privileges - 30 days (max.)
- Loss of job

Pay medical expenses

2nd RVR:

Same

Increase loss of privileges up to 60 days (max.)

3rd RVR:

Same

Increase loss of privileges up to: visiting, telephone & canteen - 6 months

Rule #2 . . . .

APPENDIX L

New Hampshire Department of Corrections
Policy and Procedure Directive
Chapter: Resident Programming
Statement Number 7.9

PPD 7.9(IV)(M)(1)

M. Conduct

1. Visitation is a privilege and not a right and violation of rules may result in termination of the visit, loss of the inmate's visiting privileges, banning of the visitor from entering the institution or its grounds and/or criminal charges as circumstances warrant. . . .

PPD 7.9(IV)(P)

P. Drug-Free Environment

The New Hampshire Department of Corrections promotes a drug-free environment. A drug free environment is essential to recovery and to a safe institution for inmates to live in and staff to work in.

Any inmate to be found in possession of drugs, have a positive urine test for drugs or refuse to submit to a urine test and who have been found guilty at a disciplinary hearing, will have immediate family visits suspended for thirty (30) days and all others suspended for one year. At the end of the one year suspension, they will be allowed non-contact visits. If it can be proven that a specific visitor brought drugs into the prison, that visitor may be

barred in accordance with COR 306.04 and prosecuted in accordance with RSA 622:24. . . .

APPENDIX M

Official Compilation of Codes, Rules and Regulations of the State of New York
Title 7
Chapter IV
Part 200
Section 200.5 Termination, suspension and revocation.

§ 200.5(a)

General. Pursuant to the procedures set forth in this section, a superintendent may deny, limit, suspend or revoke the visitation privileges of any inmate or visitor to visit each other if the superintendent has reasonable cause to believe that such action is necessary to maintain the safety, security, and good order of the facility. . . .

APPENDIX N

State of North Carolina
Department of Correction
Division of Prisons
Policy & Procedures
Chapter: B
Section: .0200
Title: Inmate Disciplinary Procedures

Ch. B, § .0204 Authorized Disciplinary Punishments

Presumptive punishments are established for the four (4) classes of offenses. Unless the punishment is decreased or suspended by the Hearing Officer per .0204(e)(4) and (5), or decreased or suspended by the facility head or designee per .0204(e)(6) and (f)(2), all the presumptive punishments listed for each class may be awarded for conviction of a disciplinary offense within the given class. The facility head/designee may void any disciplinary punishment. In those cases where the facility head/designee voids a disciplinary punishment, designated staff shall forward a memorandum documenting this action to the Chief Disciplinary Hearing Officer who shall ensure that it is documented in the inmate's appropriate electronic file. The presumptive punishments are as follows:

(a) For a Class A offense, the following presumptive punishments are authorized:

(1) Confinement in disciplinary segregation for up to 60 days.

(2) Demotion from minimum to medium custody.

(3) Loss of 40 days sentence reduction credits, as applicable.

(4) 50 hours extra duty within the next 60 days following the hearing or release from disciplinary segregation. Not more than 4 hours shall be performed on a work day and not more than 8 hours on other days.

(5) Loss of up to three (3) privileges for a period not to exceed six months. These privileges include but are not limited to: work release, home leaves, community volunteer leave, canteen, telephone and visitation.

(6) Limit weekly trust fund withdrawals to $10.00 for a period not to exceed 6 months. . . .

APPENDIX O

State of Ohio
Department of Rehabilitation and Correction
Section 312
Number 2

Part VI(K) Denial, Termination and Suspension of Visits

Visitors may be excluded when there is reason to believe that their presence would be disruptive to the institution or to the inmate's adjustment. Such exclusions may range from denial of visiting for that day, suspension of visiting privileges for a specific period of time, or permanent removal from the approved visiting list. . . .

Only the Warden or designee can suspend visitation privileges. In addition to the visitor involved in misconduct, the Warden may, at his/her discretion, suspend all of the inmate's approved visitors, except attorneys and clergy unless they are personally involved, for any misconduct involving the inmate and a visitor. Upon determining that visitation shall be suspended, the Warden or designee shall provide a written notice of the time period of suspension to the inmate, all suspended visitors and visitation staff (DRC 2200 and 2199). In addition, the Wardens of all other ODRC institutions shall be notified, either through written or electronic communication, as any suspension from an institution serves as suspension from all facilities. The statement of reasons may be limited to the extent it would jeopardize the security of the institution or the safety of any individual. All suspensions and/or changes in a visitor's status shall be entered into the DOTS Screen (VISTI) within 24 hours of the decision to suspend. . . .

Part VI(L) Visiting Restrictions

In all instances where inmates test positive for or are in possession of illegal drugs, or refuse to comply with a request for a drug screen, in addition to appropriate Rules Infraction Board disciplinary actions, the Warden/Designee or designee may modify the inmate's visits according to the following:

1. First Offense - All visits may be suspended for up to two (2) months.

2. Second Subsequent Offense: All visits may be suspended for up to six months. Progressive disciplinary action will apply for subsequent offenses.

3. This section does not affect attorney and clergy visits, unless that person is involved in the drug violation.

APPENDIX P

Code of Rhode Island Rules
Department of Corrections
Inmate Life
Visits

§06.070.004 Pt. III(E)(13)

13. Drug-Related Offenses by Inmates: An inmate's behavior within the facility may affect his/her visiting status. Any offense that is drug-related may result in an inmate's visiting privileges being suspended for a period of time:

First Offense:	30 days
Second Offense:	6 months
Third and subsequent offenses:	1 year

APPENDIX Q

South Carolina Department of Corrections
Policy/Procedure
OP-22.09

11. Inmate Disciplinary Procedures Applicable to Visitation:

a. Because general visitation is a privilege granted to inmates, such visitation is subject to suspension. Contingent upon the seriousness of the offense, any violation of SCDC rules and regulations that an inmate is party to will result in the inmate being disciplined in accordance with SCDC Procedure OP-22.14(OP), "Inmate Disciplinary Procedures."

b. Those inmates who violate SCDC rules and regulations by committing the offense of sexual misconduct (Indecent Exposure), regardless of where the offense occurs, will not be allowed any visitation privileges for one (1) year. Chronic offenders will be disciplined in accordance with SCDC Procedure OP-22.14(OP) "Inmate Disciplinary Procedures."

c. Those inmates found possessing drugs or money either while in the visiting room or entering or exiting the visiting room during shakedown will be charged with violating Agency rules and regulations and will be processed pursuant to SCDC Procedure OP-22.14(OP), "Inmate Disciplinary Procedures." Inmates found guilty of possessing such contraband in the above circumstances will be automatically suspended from all visiting privileges for a period of two (2) years and will be

suspended from telephone privileges with the person(s) they were visiting at the time of the offense provided that the visitor(s) are found to be involved in the commission of the offense.

d. Those inmates found with tennis shoes or other clothing/jewelery that was exchanged/passed to them while in the visiting room or exiting the visiting room during shakedown will be charged with violating Agency rules and regulations and will be processed pursuant to SCDC Procedure OP-22.14(OP), "Inmate Disciplinary Procedures." Inmates found guilty of possessing such items in the above circumstances will be automatically suspended from all visiting privileges for a period of two (2) years.

e. In addition to the disciplinary sanctions imposed as a result of Inmate Disciplinary Hearings, inmates will be subjected to visitation suspension if they are found guilty of possession or attempting to obtain any contraband/illegal item described in Procedure 6.b.(3) (with the exception of drugs, money, or items discussed in Procedure 11.d.), above, and/or any unauthorized item while on visitation, while entering or exiting the visiting area, or immediately subsequent to visitation, and/or any other infraction related specifically to visitation pursuant to the following schedule:

(1) First Offense = Mandatory three (3) month visitation suspension.

(2) Second Offense = Mandatory six (6) month visitation suspension.

(3) Third Offense = Mandatory two (2) year visitation suspension.

Under no circumstances will any variations, waivers, or deductions by made to any authorized suspension.

APPENDIX R

Tennessee Department of Correction
Administrative Policies and Procedures
Index #507.01

507.01(VI)(F)(4)

Other than as specified in Policy #502.01 (or #9502.01 for privately managed facilities), only the warden can suspend visitation privileges. In addition to the visitor involved in misconduct, the warden may suspend all of the inmate's approved visitors, except attorneys and ministers unless they are personally involved, and the inmate's immediate family who were not involved in the misconduct, for any misconduct involving the inmate and a visitor. Upon determining that visitation shall be suspended, the warden shall provide a written notice to the inmate, visitor, and visitation staff. The statement of reasons may be limited to the extent it would jeopardize the security of the institution or the safety of any individual. Visiting privileges may be suspended for up to six (6) months for any reason, including, but not limited to, the following:

a. Upon reviewing a denial/termination report, the warden determines suspension is warranted

b. The visitor(s) and/or inmate have become intoxicated during the visit

c. Visitor repeatedly violated visiting rules

d. Visitor continually failed to control children

e. Visitor exhibits other behavior and action which the warden in his/her discretion decides could jeopardize the security of the institution

f. Any visitor refusing a search of any type may be permanently restricted from visiting at any TDOC facility

g. Inappropriate sexual contact.

APPENDIX S

CODE OF FEDERAL REGULATIONS
TITLE 28--JUDICIAL ADMINISTRATION
CHAPTER V--BUREAU OF PRISONS, DEPARTMENT OF JUSTICE
SUBCHAPTER C--INSTITUTIONAL MANAGEMENT
PART 540--CONTACT WITH PERSONS IN THE COMMUNITY
SUBPART D--VISITING REGULATIONS

Current through June 4, 2002; 67 FR 38426

§ 540.52 Penalty for violation of visiting regulations.

Any act or effort to violate the visiting guidelines of an institution may result in disciplinary action against the inmate, which may include the denial of future visits, possibly over an extended period of time. Moreover, criminal prosecution may be initiated against the visitor, the inmate, or both, in the case of criminal violations.